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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 74.

THE UNION PACIFIC RAILWAY COMPANY, APPELLANT,

vs.

WILLIAM F. THOMPSON AND JAMES K. THOMPSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED AUGUST 13, 1888.

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1 *Pleas in the Circuit Court of the United States for the District of Colorado, Sitting at Denver.*

Be it remembered that heretofore and on, to wit, the 27th day of December, A. D. 1884, the same being one of the regular juridical days of the October term, A. D. 1884, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in a certain cause in said court then pending, wherein William F. Thompson and James K. Thompson were plaintiffs and The Union Pacific Railway Company was defendant, to wit:

Order: Leave to Docket.

WILLIAM F. THOMPSON and JAMES K. THOMPSON *vs.* THE UNION PACIFIC RAILWAY COMPANY.	1672. Bill for an Injunction and Other Relief. From District Court, Weld County.

At this day comes the said defendant, by Willard Teller, Esq., its solicitor, and presents to the court here the transcript of the record and proceedings of the district court of the county of Weld herein, and moves to docket the cause in this court; and the court being now sufficiently advised in the premises, it is ordered by the court that the said motion be sustained.

2 Therefore it is ordered by the court that the said cause be entered upon the dockets of this court, with leave nevertheless to the said complainants to move to remand to said district court.

And afterwards and on the same day, to wit, the 27th day of December, A. D. 1884, came Willard Teller, Esq., an attorney of said court, and filed in said court a transcript of proceedings heretofore had in the district court of the second judical district of the State of Colorado, sitting in and for the county of Weld, in a certain cause in said district court lately pending, wherein William F. Thompson *et al.* were plaintiffs and the Union Pacific Railway Company was defendant.

And the said transcript is in words and figures as follows, to wit:

Transcript.

STATE OF COLORADO, *County of Weld,* } *ss.*:

Pleas in the district court of the second judicial district of the State of Colorado, sitting in and for the county of Weld, held by and before the Honorable Victor A. Elliott, judge of the second judicial district of said State, at a term thereof begun and holden at the court-house, in the town of Greeley, in said county, on the third Tuesday (it being the eighteenth day) of March, in the year of our Lord one thousand eight hundred and eighty-four.

3 Present: Honorable Victor A. Elliott, judge of said district; Herman E. Luthe, Esq., district attorney of said district;

John C. Kendel, Esq., sheriff of said county; Charles H. Wheeler, Esq., clerk of said court.

In the Matter of WILLIAM F. THOMPSON and JAMES K. THOMPSON, Plaintiffs,
vs.
THE UNION PACIFIC RAILWAY COMPANY, Defendants. } 349.

Be it remembered that heretofore and on the 28th day of March, A. D. 1884, came the plaintiffs in the above-entitled action, by H. N. Haynes, Esq., their attorney, and filed in said court their complaint, together with an affidavit of James K. Thompson; which said complaint is in words and figures as follows, to wit:

STATE OF COLORADO, } *ss*:
Weld County, }

In the District Court within and for said County.

WILLIAM F. THOMPSON and JAMES K. THOMPSON, Plaintiffs,
vs.
THE UNION PACIFIC RAILWAY COMPANY, Defendant.

4 The plaintiffs complain and allege—

That they are the owners in fee and in the full and exclusive possession and enjoyment of lots five, six, and seven, in block sixty-two (62), of the town of Greeley, according to the recorded plat thereof, and in the county of Weld and State aforesaid.

That plaintiffs are and have been for many years engaged in the lumber business in said Greeley, and for such purpose they now are and have been using said lots as and for a lumber yard; that they have constructed large sheds thereon for the purpose of covering and protecting their lumber; that said yard or lots now contain, as at all times, large quantities of lumber, and the whole of said lots are necessary for the constant and uninterrupted use of plaintiffs as a lumber yard to conduct their lumbering trade and business.

That the defendant is a corporation owning and operating a railroad alongside of said lots of plaintiffs.

That the defendant, through its officers, agents, and employés, unlawfully and without right is about to trespass upon said lots of plaintiffs and construct, lay down, and operate a track through, over, and across said lots of plaintiffs.

That to such end they have already constructed said track up to the south end of said lots and abutting the sheds and lumber piles of plaintiffs at such point, and have notified plaintiffs to clear away their sheds and lumber to let them finish constructing said track over and across said lots and through said yard lengthwise, and at the same time declaring the object and immediate purpose of said railway company to finish such construction of said track without delay or hindrance.

5 That said defendant has not and, as plaintiffs are informed and believe, do not propose to take proceedings to condemn

right of way across said lots; but, on the contrary, intends to cross the same forcibly and with violence, and—

That plaintiffs will suffer great and irreparable injury if such wilfull trespass is committed by defendant; that their sheds will have to be torn down and destroyed and the lumber in large quantities removed, and that plaintiffs have not room or space to remove and store their lumber and conduct their said business.

Wherefore plaintiffs pray judgment against defendant, its officers, agent, servants, and employés, and each and every of them, commanding and enjoining them and every of them to desist and refrain absolutely from entering upon or in any manner whatsoever interfering with said lots five, six, and seven, in block sixty-two, in the town of Greeley, county and State aforesaid, or the improvements and property thereon situate.

And for such other and further or different relief as to the court shall seem meet, and for costs of suit.

HAYNES, DUNNING & ANNIS,
Pl'ffs' Att'ys.

STATE OF COLORADO, } ss:
Larimer County, }

James K. Thompson, being duly sworn, says that he is one of the plaintiffs in the above action; that he has read the foregoing complaint and knows the contents thereof; that the matters therein stated are true of his own knowledge, except as to those
6 matters therein stated on information and belief, and as to those matters he believes it to be true.

JAMES K. THOMPSON.

Subscribed and sworn to before me this 28th day of March, A. D. 1884.

JAMES C. SCOTT,
County Judge.

And said affidavit of James K. Thompson is in words and figures as follows, to wit:

STATE OF COLORADO, } ss:
Weld County, }

In the District Court within and for said County.

WILLIAM F. THOMPSON *et al.*, Pl'ffs, }
vs.
THE UNION PACIFIC RAILWAY COMPANY, Def't. }

James K. Thompson, being duly sworn, says that he is one of the plaintiffs in said cause, and that the injunctive relief therein prayed for is too urgent to admit of the delay incident to giving notice for injunction.

JAMES K. THOMPSON.

Subscribed and sworn to before me this 28th day of March, 1884.
JAMES C. SCOTT,
County Judge.

7 (Endorsed:) "349. District court. Wm. F. Thompson *et al. v.* Union Pacific Railway Co. Affidavit. Filed March 28, 1884. Chas. H. Wheeler, clerk. Haynes, Dunning & Annis, pl'ffs' att'ys."

Said above-described complaint bears endorsement in words and figures as follows, to wit: "349. Weld district court. Wm. F. Thompson *et al. vs.* Union Pacific Railway Co. Complaint. Filed Mar. 28, 1884. Chas. H. Wheeler, clerk. Haynes, Dunning & Annis, pl'ffs' att'ys."

And afterwards and on, to wit, the 29th day of March, A. D. 1884 (the same being one of the regular juridical days of the March term, A. D. 1884, of said court), the following proceedings (*inter alia*) were had and entered of record in said court in said cause, to wit:

WILLIAM F. THOMPSON and JAMES K. THOMPSON, Plaintiffs,
vs.
THE UNION PACIFIC RAILWAY COMPANY, Defendant. } 349.

In this action it appearing to the court, from the verified complaint and the affidavit of James K. Thompson filed herein, that it is a proper case for an injunction, and that sufficient grounds exist therefor, and that the case is too urgent to admit of the delay incident to giving notice—

8 Now, on motion of H. N. Haynes, Esq., attorney for said plaintiffs, it is ordered that upon the filing of an undertaking herein in the penal sum of five hundred dollars and conditioned as required by law, with sufficient sureties, to be approved by the clerk of this court, a temporary writ of injunction issue as prayed for in complaint.

And afterwards and on, to wit, the 29th day of March, A. D. 1884, came again the said plaintiffs, by their attorney as aforesaid, and filed in said court and in said cause an order, signed by the judge thereof; which said order is in words and figures as follows, to wit:

STATE OF COLORADO, } *ss:*
County of Weld, }

In the District Court of said County.

WILLIAM F. THOMPSON and JAMES K. THOMPSON, Plaintiffs,
vs.
THE UNION PACIFIC RAILWAY COMPANY, Defendant.

In this action it appearing to the court, from the verified complaint and the affidavit of James K. Thompson filed herein, that it is a proper case for an injunction, and that sufficient grounds exist therefor, and that the case is too urgent to admit of the delay incident to giving notice—

Now, on motion of H. N. Haynes, Esquire, attorney for said plaintiffs, it is ordered that upon the filing of an undertaking
9 herein in the penal sum of five hundred dollars and conditioned as required by law, with sufficient sureties, to be approved by the clerk of this court, a temporary writ of injunction issue as prayed for in complaint.

Greeley, Colorado, March 29th, 1884.

VICTOR A. ELLIOTT, *Judge.*

(Endorsed:) "349. Filed March 29, 1884. Chas. H. Wheeler, clerk."

And afterwards and on, to wit, the 29th day of March, A. D. 1884, came again the said plaintiff, by his attorney as aforesaid, and filed in said court and in said cause his undertaking on injunction; which said undertaking is in words and figures as follows, to wit:

STATE OF COLORADO, } ss:
County of Weld, }

In the District Court of the County of Weld, State of Colorado.

WILLIAM F. THOMPSON and JAMES K. THOMPSON, Plaintiffs,	Undertaking on Injunction.
vs.	
THE UNION PACIFIC RAILWAY COMPANY, Defendant.	

Whereas the above-named plaintiffs have commenced or are about to commence an action in the district court of Weld
10 county and State of Colorado against the above-named defendant, and is about to apply for an injunction in said action against said defendant enjoining and restraining it from the commission of certain acts, as in the complaint filed in the said action is more particularly set forth and described:

Now, therefore, we, the undersigned, residents of the county of Weld, State of Colorado, in consideration of the premises and of the issuing of said injunction, do, jointly and severally, undertake in the sum of five hundred dollars, and promise, to the effect that, in case said injunction shall issue, the said plaintiffs will pay to the defendant all costs and damages which shall be awarded against the complainant in case the said injunction shall be modified or dissolved, in whole or in part.

Dated this 28th day of March, A. D. 1884.

WILLIAM S. McELROY.
WILLIAM C. HOUGHTON.

STATE OF COLORADO, } ss:
County of Weld, }

William S. McElroy and William C. Houghton, the sureties whose names are subscribed to the above undertaking, being severally duly sworn, each for himself says that he is a resident and freeholder within the said Weld county, and that he is worth the sum speci-

fied in the said undertaking as the penalty thereof over and above his just debts and liabilities, in property not by law exempt from execution in this State.

WILLIAM S. McELROY.
WILLIAM C. HOUGHTON.

Subscribed and sworn to before me this 29 day of March,
11 A. D. 1884.

CHARLES H. WHEELER, *Clerk.*

(Endorsed :) "No. 349. In district court, Weld county. Wm. F. Thompson, plaintiff, *vs.* Union Pacific R'y Co., defendant. Undertaking on injunction. Approved and filed this 29th day of March, 1884. Chas. H. Wheeler, clerk. Haynes, Dunning & Annis, attorneys for plaintiffs."

Thereupon and on said 29th day of March, A. D. 1884, the said plaintiffs, by their attorney as aforesaid, sued out of said court a writ of injunction in said cause; which injunction is in words and figures as follows, to wit:

STATE OF COLORADO, } *ss :*
County of Weld, }

In the District Court of Weld County, State of Colorado.

WILLIAM F. THOMPSON and JAMES K. THOMPSON, Plaintiffs, *vs.* THE UNION PACIFIC RAILWAY COMPANY, Defendant. } Injunction.

12 The people of the State of Colorado to the Union Pacific Railway Company, its officers, agents, servants, and employees, send greeting:

The above-named plaintiffs having filed their complaint in our district court of the 2nd judicial district against the above-named defendant, praying for an injunction against said defendant, requiring it to refrain from certain acts in said complaint and hereinafter more particularly mentioned—

On reading the said complaint in this action, duly verified, on oath, by James K. Thompson, and it satisfactorily appearing to Hon. V. A. Elliott, judge of said court, therefrom that it is a proper case for an injunction and that sufficient grounds exist therefor, and the necessary and proper undertaking having been given:

We therefore, in consideration thereof and of the particular matters in said complaint set forth, do strictly command you and each and every of you that until the farther order of said court you and each of you, your and each of your servants, agents, attorneys, employees, and all persons acting under the control, authority, or direction of you or either of you, do absolutely refrain from and desist absolutely from entering upon or in any manner whatsoever interfering with lots five, six, and seven, in block sixty-two, in the town

of Greeley, county and State aforesaid, or the improvements and property thereon situate.

Witness Charles H. Wheeler, clerk of said court, and the seal thereof, at Greeley, Weld county aforesaid, this 29th day of March, A. D. 1884.

[SEAL.] CHARLES H. WHEELER, *Clerk.*

And said writ of injunction bears endorsements in words and figures as follows, to wit:

13 STATE OF COLORADO, } ss:
County of Weld, }

I do hereby certify that I have duly executed the within writ on this 29th day of March, A. D. 1884, by delivering an exact copy thereof to and leaving such copy with Eugene H. Abbott, station agent at Greeley of The Union Pacific Railway Company, defendant, at Greeley, in said Weld county.

JOHN C. KENDEL, *Sheriff.*

STATE OF COLORADO, } ss:
County of Arapahoe, }

I do hereby certify that I have duly executed the within writ on this 31st day of March, A. D. 1884, by delivering a true copy of the within injunction to A. A. Egbert, general superintendent of the within-named defendant, The Union Pacific Railway Company, at its principal place of business in Denver, Arapahoe county, Colorado, the president, vice-president, secretary, treasurer, cashier, or any stockholder of said company not found in my county.

GEO. H. GRAHAM, *Sheriff,*
By GEO. D. WATSON, *Deputy.*

(Endorsed:) "349. In district court, Weld county. Wm. F. Thompson *et al.*, plaintiffs, *vs.* The Union Pacific R'y Co., defendant. Injunction. Haynes, Dunning & Annis, attorneys for plaintiffs. Sheriff's fees: Service, $2.00; mileage, .60—total, $2.60. Filed May 21, 1884. Charles H. Wheeler, clerk."

14 Thereupon and on said 29th day of March, A. D. 1884, the said plaintiffs, by their attorney as aforesaid, sued out of said court a writ of summons in said cause; which summons is in words and figures as follows, to wit:

STATE OF COLORADO, } ss:
County of Weld, }

In the District Court of the 2nd Judicial District of the State of Colorado in and for the County of Weld.

WILLIAM F. THOMPSON and JAMES K. THOMPSON, Plaintiffs, *vs.* THE UNION PACIFIC RAILWAY COMPANY, Defendant. } Summons.

The people of the State of Colorado send greeting to The Union Pacific Railway Company, defendant above named:

You are hereby required to appear in an action brought against you by the above-named plaintiffs in the district court of the 2nd judicial district of the State of Colorado in and for the county of Weld, and to answer the complaint filed therein within ten days, exclusive of the day of service, if served within this county, or, if served out of this county but in this district, within twenty days, otherwise within forty days, or judgment by default will be taken against you according to the prayer of the complaint.

15 The said action is brought to command and enjoin you, your officers, agents, servants, and employés, to desist and refrain absolutely from entering upon or in any manner whatsoever interfering with lots five, six, and seven, in block sixty-two, in the town of Greeley, county and State aforesaid, or the improvements and property thereon situate, which you are said to be about to do if not enjoined, as will more fully appear by the complaint on file herein, to which reference is here made.

And you are hereby notified that if you fail to appear and answer the said complaint as above required the said plaintiffs will apply to the court for the relief demanded in the complaint.

Given under my hand and the seal of the district court of the 2nd judicial district of the State of Colorado in and for the county of Weld, at Greeley, in said county, this 29th day of March, A. D. 1884.

CHARLES H. WHEELER, *Clerk.*

Endorsed.

STATE OF COLORADO, } ss:
County of Weld, }

I do hereby certify that I have duly executed the within summons on this 29th day of March, A. D. 1884, by delivering to and leaving with Eugene H. Abbott, agent of said corporation defendant, The Union Pacific Railway Company, a true copy of said summons at Greeley, Weld county, Colorado, said Abbott refusing to accept such service.

JOHN C. KENDEL, *Sheriff.*

16 STATE OF COLORADO, } ss:
County of Arapahoe, }

I do hereby certify that I have duly executed the within writ on

this 31st day of March, A. D. 1884, by delivering a true copy of the within summons to A. A. Egbert, general superintendent of the within-named defendant, The Union Pacific Railway Company, at its principal place of business in Denver, Arapahoe county, Colorado, the president, vice-president, treasurer, cashier, or any stockholder of said Union Pacific R'y Co. not found in my county.

GEORGE H. GRAHAM, *Sheriff*,
By GEO. D. WATSON, *Deputy*.

[Endorsed:] "No. 349. Wm. F. Thompson *et al.*, plaintiffs, *versus* The Union Pacific R'y Co., defendant. Summons. District court. Haynes, Dunning & Annis, attorneys for plaintiffs. Sheriff's fees: Service, $1.00; mileage, .30—$1.30. Filed May 21, 1884. Charles H. Wheeler, clerk."

And afterwards and on, to wit, the 21st day of April, A. D. 1884, came the said defendant, by E. R. French, Esq., its attorney, and filed in said court and in said cause a stipulation; which said stipulation is in words and figures as follows, to wit:

In District Court, Weld Co., Col.

WM. F. THOMPSON *et al.*, Pl'ffs,
vs.
THE UNION PACIFIC R'Y CO., Def't.

Stipulation Giving Time to Plead.

17 It is hereby stipulated and agreed by and between the parties hereto that said defendant may have until the 15th day of May, 1884, to answer, demur, or otherwise plead to the complaint herein.

HAYNES, DUNNING & ANNIS,
Att'ys for Pl'ffs.

April 18, '84.

(Endorsed:) 349. Wm. F. Thompson *et al. vs.* The U. P. R'y Co. Stipulation extending time to plead. E. R. French, Teller & Orahood, att'ys for def't. Filed Apr. 21, 1884. Chas. H. Wheeler, clerk.

And afterwards and on, to wit, the 10th day of May, A. D. 1884, came again the said defendant, by E. R. French, Esq., its attorney, and filed in said court and in said cause its answer; which said answer is in words and figures as follows, to wit:

In the District Court in and for the County of Weld, State of Colorado.

WM. F. THOMPSON and JAMES K. THOMPSON, Pl'ffs,
vs.
THE UNION PACIFIC RAILWAY COMPANY, Def't.
} Answer.

And now comes said defendant, and, answering said complaint—
1. Admits that said plaintiffs are in possession and enjoyment of

lots five, six, and seven, in block sixty-two, of the town of Greeley, said county, or of some portion thereof, but denies that said plaintiffs or either of them are the owners in fee and in the full and exclusive possession of said lots.

2. Admits that said plaintiffs are and have been, as alleged, engaged in the lumber business in said town and are and have been using said lots or some portion thereof as a lumber yard, said defendant not being sufficiently informed to say how much or what part of said lots said plaintiffs so occupy; admits the construction of sheds and the existence of large quantities of lumber on said lots, as alleged, but denies that the whole of said lots are necessary for the constant and uninterrupted use of said plaintiffs as a lumber yard, as alleged.

3. Admits that defendant is a corporation owning and operating a railroad, as alleged.

4. Said defendant denies that it is in manner as alleged or in any manner unlawfully and without right about to trespass upon said lots of plaintiff- and construct, lay down, and operate a track through, over, and across said lots of plaintiffs or any land of plaintiffs or either of them.

5. Admits that defendant has constructed a track up to or near the south end of said lots, abutting upon said sheds and lumber piles, and has notified said plaintiffs to clear away said sheds and lumber to let defendant finish the construction of said track over and across the land in said complaint alleged to be parcel of said lots, not admitting, however, through not being sufficiently informed in the premises, that said land is parcel of said lots, but admitting that said track would traverse a portion of said lumber yard as now occupied, and admitting that it has been the immediate purpose of defendant to finish the construction of
19 said track without delay.

6. Said *plaintiff* further admits that it does not propose to proceed to condemn a right of way for said track across said lots, but denies that it intends or has intended to cross the same forcibly and with violence, and denies that said plaintiffs will suffer great or irreparable injury if such willful trespass is committed by defendant, denying any intention on the part of defendant to commit any willful trespass whatsoever, and is unable to state, not being sufficiently informed, whether said sheds or said lumber or any part of them will have to be torn down or destroyed if or when said track is completed, and for the same reason is unable to state whether said plaintiffs will, in that event, have sufficient room or space to remove and store their lumber and conduct their business.

7. This defendant alleges the truth and fact to be that it owns and is entitled to use and occupy for general railroad purposes, including the laying and maintaining of all necessary tracks thereon, a right of way for its said railroad on the line on which the same is now constructed through and over said block, which said way is two hundred feet in width, being one hundred feet on either side of the center line of the main track of said railroad as there now being,

and that its title to such right of way, derived by grant from the United States, is older and prior in time to any title, claim, or right that said plaintiffs or either of them have in or to said above-named lots or any part thereof; that said track so as aforesaid proposed and begun to be laid down was proposed and begun and laid out within the bounds of said way—that is, within one hundred feet from said center line of said main track.

20 And said defendant further alleges that said lumber yard intrudes and overreaches upon said way, right to occupy which is so owned by defendant, without right or color of right so to do and without said defendant's permission or license, and that it is only because and where said yard so encroaches that the said track so laid down as aforesaid would or will enter or touch said yard.

Wherefore said defendant prays to be hence dismissed with its costs.

TELLER & ORAHOOD,
E. R. FRENCH,
Att'ys for Def't.

STATE OF COLORADO, } ss:
County of Arapahoe, }

Augustus A. Egbert, being first duly sworn, on oath says that he is general superintendent of The Union Pacific Railway Company, the defendant above named; that he has read the foregoing answer, and the same is true to the best of his knowledge and belief.

A. A. EGBERT.

Sworn to and subscribed before me this ninth day of May, 1884.

HENRY B. MOSS,
[SEAL.] *Notary Public in and for the County Aforesaid.*

Endorsed: "349. Weld Co. dist. court. Wm. F. Thompson *et al.* vs. The U. P. R'y Co. Answer. Teller & Orahood, E. R. French, att'ys for def't. Filed May 10, 1884. Chas. H. Wheeler, clerk."

21 And afterwards and on, to wit, the 21st day of May, A. D. 1884, came again the said plaintiffs, by their attorney as aforesaid, and filed in said court and in said cause a stipulation; which said stipulation is in words and figures as follows, to wit:

STATE OF COLORADO, } ss:
County of Weld, }

In the District Court of the Second Judicial District within and for said County.

WILLIAM F. THOMPSON and JAMES K. THOMPSON, Plaintiffs,
vs.
THE UNION PACIFIC RAILWAY COMPANY, Defendant.

It is hereby stipulated on behalf of the defendant that plaintiffs have time until and including the 31st day of May, 1884, in which

to reply or demur to or move concerning the answer of defendant filed herein.

TELLER & ORAHOOD,
Def't's Att'ys.

Dated at Denver, Arapahoe Co., Colo., May 20th, 1884.

Endorsed: "No. 349. In district court, Weld Co. William F. Thompson *et al. vs.* The Union Pacific Railway Co. Haynes, Dunning & Annis, att'ys for plaintiffs. Filed May 21, 1884. Charles H. Wheeler, clerk."

22 And afterwards and on, to wit, the 31st day of May, A. D. 1884, came again the said plaintiffs, by their attorney as aforesaid, and filed in said court and in said cause their replication; which said replication is in words and figures as follows, to wit:

STATE OF COLORADO, } *ss:*
County of Weld, }

In the District Court of said County.

WILLIAM F. THOMPSON and JAMES K. THOMPSON, Plaintiffs, *vs.* THE UNION PACIFIC RAILWAY COMPANY, Defendant. } Replication.

Come now said plaintiffs and reply to the new matter in defendant's answer contained as follows:

For a first reply plaintiffs deny that defendant owns or is entitled to use or occupy for any purpose a way or right of way through, on, or over said block 62 or any part thereof, and deny that defendant has title or color of title to any right of way through, on, across, or over or in any manner affecting lots 5, 6, and 7 of said block 62, described in complaint, and deny that the track proposed and begun to be laid down as stated in complaint and answer was so proposed and begun to be laid out within the bounds of any right of way to which said defendant has any claim or title or color of title; and plaintiffs deny that their lumber yard intrudes or encroaches
23 upon any way right to occupy — is owned by defendant.

For a second reply plaintiffs aver that on the 16th day of May, 1878, and hence hitherto they and their grantors have been in the peaceable and exclusive and undisputed possession of all the real property in complaint described under claim and color of title made in good faith under good and sufficient deeds of conveyance theretofore duly recorded, and purporting to convey an estate in fee simple absolute therein, and during all said time have occupied all of said premises as and for a lumber yard, and ever since that day and for a period of five successive years thereafter have solely and exclusively paid all takes legally assessed on said lands and tenements and for improvements situate thereon, whereby plaintiffs are the legal owners of said lands and tenements by title in fee simple absolute, and defendant is barred from claiming any adverse

title or easement therein by virtue of an act of the Legislative Assembly of the Territory of Colorado, entitled "An act limiting the time for bringing actions respecting real estate," approved February 13th, 1874.

For a third reply plaintiffs aver—

1. That on the 21st day of October, A. D. 1870, the Union Colony of Colorado, a corporation duly organized and doing business in said Weld county, was the owner and in the possession of sundry lands (including said block 62) in the town of Greeley, according to the plat thereof, which plat had theretofore been made and filed for record in the office of the recorder of deeds of said Weld
24 county by said The Union Colony of Colorado, such lands lying contiguous to the railroad track of the Denver Pacific Railway and Telegraph Company, a corporation then owning and operating the railroad now operated by defendant.

II. That on or about the day last aforesaid, at the request and solicitation of the said Denver Pacific Railway and Telegraph Company and in pursuance of an agreement had between said The Union Colony of Colorado and said Denver Pacific Railway and Telegraph Company, the former made, executed, and delivered to the latter its certain deed in words and figures as follows, to wit:

"Whereas the line or track of the Denver Pacific Railway and Telegraph Co. runs through the lands of the Union Colony of Colorado and within the town plat of Greeley, Weld county, Colorado Territory, and an agreement has been made between the said Union Colony of Colorado & the Denver Pacific Railway & Telegraph Co. by which the said Union Colony of Colorado has agreed to grant to the Denver Pacific Railway & Telegraph Co., being the owner of said lands, a right of way in and over the same: Now, therefore, know all men by these presents that the said Union Colony of Colorado, in pursuance of the said agreement and in consideration of the sum of one dollar paid to the said Union Colony of Colorado, do hereby give, grant, sell, and convey unto the said Denver Pacific Railway & Telegraph Co. a right of way fifty feet on each side from the center of the line or track of said Denver Pacific Railway and Telegraph Co. in and over and running through said town plat of Greeley aforesaid, on the east side thereof, and along the said line of said railway, the said strip of land or right of way being of the width of one hundred feet, and commencing at the southeast
25 corner of said town plat of Greeley and running north through the following blocks: One hundred and one (101), one hundred (100), eighty-two (82), seventy-nine (79), sixty-two (62), thirty-nine (39), twenty-two (22), nineteen (19), and two (2), as platted and recorded in the office of the clerk of Weld county, and the said right of way shall be forever of the said dimensions; also the said Union Colony of Colorado does hereby give, grant, sell, and convey unto the said Denver Pacific Railway & Telegraph Co. a right of way of two hundred feet along the line or track of the said Denver Pacific Railway & Telegraph Co. and within the blocks No. forty-two (42) and fifty-nine (59), in the town of Greeley, as

platted and recorded in the office of the recorder of Weld county, said right of way commencing at the center of the line of track of the said Denver Pacific Railway & Telegraph Co. and extending one hundred and fifty feet to the east side and fifty feet to the west side thereof. Said Union Colony of Colorado agrees to lay out and construct along and east of said right of way a street sixty-six feet wide, running north & south and within the blocks Nos. forty-two (42) and fifty-nine (59) aforesaid, and the said right of way shall be forever of the said dimensions. In further consideration it is expressly agreed between the parties hereto that the said Denver Pacific Railway & Telegraph Co. shall erect within three months from the date of this instrument a good and substantial building for a freight and passenger depot at or near the point of said right of way where the said railway crosses Main street, in the town of Greeley aforesaid, being on the north side of and along said Main street.

"It is also agreed, in further consideration, between the parties aforesaid that the said Denver Pacific Railway & Telegraph
26 Co. shall have for its use and benefit only the said right of way, without any right or power to give, grant, sell, convey, or rent the same. It is also agreed that intoxicating liquors shall never be manufactured, sold, or given away in or upon said premises herein conveyed with the knowledge or consent of said Denver Pacific Railway & Telegraph Co., and in case any one of these conditions shall be violated this conveyance and everything herein contained shall be null and void:

"To have and to hold said easements and privileges to the said Denver Pacific Railway and Telegraph Co. forever as appurtenances to the said railway as above described.

"In witness whereof the party of the first part has affixed its corporate seal and caused the same to be signed by N. C. Meeker, its agent and attorney-in-fact, this twenty-first day of October, A. D. 1870.

[Corporate Seal of the Union Colony of Colo.]

"N. C. MEEKER, *President.*"

Which said deed was duly stamped and properly acknowledged and on said day delivered to said The Denver Pacific Railway & Telegraph Co.

III. That the said Denver Pacific Railway & Telegraph Co. received and accepted said deed, and afterwards and on the 12th day of November, 1870, caused the same to be filed for record in the recorder's office of said Weld county, where the same is recorded in Book 1 of Mortgages, at page 298, and immediately and in pursuance of said deed took possession of said right of way therein conveyed and limited, and hence hitherto said railway Co., defendant,
27 claiming to be its successor and privy in interest, have enjoyed and used said right of way and none other or different.

IV. That since the execution of said deed neither the Denver Pacific Railway and Telegraph Company nor the defendant acquired any other or additional land or right of way in the town of Greeley.

That the defendant is the successor of the said Denver Pacific

Railway & Telegraph Co., and has no right or claim to operate said railroad or to use and enjoy the appurtenances thereof except as successor and privy in interest of said Denver Pacific Railway & Telegraph Co.

V. That said way granted by the deed hereinbefore mentioned and therein and by the acceptance thereof limited to fifty feet on each side from the center of the line or track of said railroad did not and does not pass through, across, or over lots 5, 6, or 7 of said block 62, or any part thereof; that plaintiffs' title to said lots is derived from the said The Union Colony of Colorado by deeds executed in the year 1871 through regular mesne conveyances.

VI. That the track proposed and begun to be laid down as mentioned in complaint was so proposed and begun without the limits of said right *if* way and nearly one hundred feet from the center of the railroad track referred to in the deed limiting and conveying the same, hereinbefore set forth.

Wherefore plaintiffs pray judgment as asked in the complaint, and that the injunction granted herein be made perpetual.

HAYNES, DUNNING & ANNIS,
Plaintiffs' Attorneys.

28 Endorsed: "349. In district court, Weld Co. William F. Thompson *et al. vs.* The Union Pacific Railway Co. Replication. Haynes, Dunning & Annis, plaintiffs' attorneys. Filed May 31, 1884. Chas. H. Wheeler, clerk."

And afterwards and on, to wit, the 6th day of June, A. D. 1884, came again the said defendant, by its attorney as aforesaid, and filed in said court and in said cause its petition for removal by non-resident and its bond for the removal of a cause; which said petition for removal is in words and figures as follows, to wit:

STATE OF COLORADO, } *ss:*
County of Weld, }

In the District Court of Weld County.

WILLIAM F. THOMPSON & JAMES K. THOMPSON, Pl'ffs, *vs.* THE UNION PACIFIC RAILWAY COMPANY, Def't. } Petition for Removal by Non-Resident.

To the honorable the district court of Weld county, State of Colorado:

Your petitioner respectfully shows that the matter and amount involved in the above-entitled cause exceeds, exclusive of costs, the sum or value of five hundred dollars.

29 Your petitioner further shows that the controversy in said suit is between citizens of different States, and that said plaintiffs were at the time of the commencement of this suit and still are citizens of the State of Colorado, and that your petitioner was then and still is a corporation (not a banking corporation) or-

ganized under and by virtue of the laws of the United States, to wit, certain acts of Congress; and, further, that your petitioner has a good defense to said action under and arising out of the laws of the United States and certain acts of Congress.

And your petitioner offers herewith a bond, with good and sufficient surety, in the penal sum of five hundred dollars, conditioned for his entering in the circuit court of the United States for the district of Colorado, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongly or improperly remove- thereto.

Your petitioner therefore prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States within and for the district of Colorado, according to the statute in such case made and provided.

And your petitioner will ever pray, etc.

THE UNION PACIFIC RAILWAY COMPANY,
By A. A. EGBERT,
Attorney-in-Fact and Gen'l Supt.
TELLER & ORAHOOD,
E. R. FRENCH,
Attorneys for Petitioner.

30 STATE OF COLORADO, } ss:
Arapahoe County, }

Edward R. French, being duly sworn, on oath deposes and says that he is one of the attorneys for the defendant in the above-entitled cause; that he has read the foregoing petition and knows the contents thereof, and that the matters and things therein stated are true, as he verily believes.

EDWARD R. FRENCH.

Subscribed and sworn to by said Edward R. French this ninth day of May, A. D. 1884, before me—

WM. R. SCOTT,
[SEAL.] *Notary Public in and for said County.*

Endorsed: "349. Dist. court of Weld county. Wm. F. Thompson & Jas. K. Thompson *vs.* The Union Pacific Railway Co. Petition for removal of cause by non-resident. Filed this 6th day of June, A. D. 1884. Charles H. Wheeler, clerk. Teller & Orahood, attorneys for petitioner."

And said bond is in words and figures as follows, to wit:

Bond.

Bond for the removal of a cause under the act of March 3, 1875.

31 Know all men by these presents that we, The Union Pacific Railway Company, as principal, and A. A. Egbert and Willard Teller, as sureties, are held and firmly bound unto William F. Thompson and James K. Thompson, of Weld Co., Colorado, in the penal sum of five hundred dollars; for the payment whereof, well and truly to be made, unto the said William F. & James K. Thompson, their heirs, representatives, and assigns, we bind ourselves, our heirs, successors, representatives, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: The said The Union Pacific Railway Company having petitioned the district court of Weld county, State of Colorado, for the removal of a certain cause therein pending, wherein the said William F. & James K. Thompson are plaintiffs and the said railway company is defendant, to the circuit court of the United States in and for the district of Colorado:

Now, if the said The Union Pacific Railway Company, your petitioner, shall enter in the said circuit court of the United States, on the first day of its next session after the order of removal herein, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals this ninth day of May, A. D. 1884.

THE UNION PACIFIC RAILWAY COMPANY,
By AUGUSTUS A. EGBERT,
Attorney-in-Fact. [SEAL.]
AUGUSTUS A. EGBERT. [SEAL.]
WILLARD TELLER. [SEAL.]

32 STATE OF COLORADO, } ss:
County of Arapahoe, }

I, Augustus A. Egbert, of said county, a surety named in the foregoing bond, being duly sworn, doth depose and say that I am a resident of the State of Colorado and a property holder therein; that I am worth the sum of five hundred dollars over and above all my debts and liabilities and exclusive of property by law exempt from execution; that I have property in the State of Colorado, liable to execution, of the value of more than five hundred dollars.

A. A. EGBERT.

Subscribed in my presence by said Augustus A. Egbert and by him sworn to before me this ninth day of May, A. D. 1884.

[SEAL.] HENRY B. MOSS,
Notary Public in and for said County.

Endorsed: State of Colorado, county of Weld, *ss.* In the district court, in vacation at chambers. The foregoing bond presented to me and approved as to form and sufficiency of sureties this June 4, 1884. Victor A. Elliott, judge of said court. "349. Bond
33 for removal of cause under act of 1875. In the district court of Weld county, Colorado term, 1884. Wm. F. Thompson *et al.*, plaintiffs, against The U. P. R'y Co., defendant. Bond for the removal of said cause to the circuit court of the United States for the district of Colorado under act of March 3, 1875. Filed the 6th day of June, 1884. Charles H. Wheeler, clerk. Teller & Orahood, attorneys for petitioner."

And afterwards and on, to wit, the 30th day of October, A. D. 1884, came again the said defendant, by its attorney as aforesaid, and filed in said court and in said cause its supplemental petition for removal of cause; which said supplemental petition is in words and figures as follows, to wit:

STATE OF COLORADO, } *ss:*
County of Weld, }

In the District Court of Weld County Aforesaid.

WM. F. THOMPSON *et al.*, Pl'ffs, }
vs.
THE UNION PACIFIC RAILWAY COMPANY, Def't. }

Petition for Removal by Non-Resident.

To the honorable the district court of Weld county, State of Colorado:

Your petitioner, said def't, respectfully shows that the matter and amount involved in the above-entitled cause exceeds,
34 exclusive of costs, the sum or value of five hundred dollars.

Your petitioner further shows that the controversy in said suit is between citizens of different States, and that the petitioner was at the time of the commencement of this suit and still is a corporation (not a banking corporation) organized under a law of the United States, and that said plaintiffs were then and still are citizens of the State of Colorado; and your petitioner further shows that, being such corporation as above, it has a defense to this action arising under or by virtue of a law of the United States; and your petitioner further shows and states that this suit is one arising under the laws of the United States in this, to wit, that your petitioner, said defendant, rests its defense herein on the right, under certain statutes of the United States, to enter the land that it is herein sought to be enjoined from entering, claiming under such statutes an easement in said land, and that this suit directly involves the construction of such statutes, the same being the act of July 1, 1862, incorporating this def't; the act of July 21, 1864, and other acts amendatory thereof; the act of March 3, '66, relating to the Union Pacific

R'y Co., Eastern Division; the act of March 3, '69, authorizing said last-named Co. to grant certain rights of way to the Denver Pacific Company, and other acts of Congress in the same connection.

And your petitioner offers herewith a bond, with good and sufficient surety, in the penal sum of five hundred dollars, conditioned for his entering in the circuit court of the United States for the district of Colorado, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

35 Your petitioner therefore prays this honorable court to proceed no further herein except to make the order of removal required by law and to accept the said surety and bond and to cause the record herein to be removed into said circuit court of the United States within and for the district of Colorado, according to the statute in such case made and provided.

And your petitioner will ever pray, etc.

THE UNION PACIFIC RAILWAY CO.,
By E. R. FRENCH, *Attorney.*

TELLER & ORAHOOD,
E. R. FRENCH,
Attorneys for Petitioner.

STATE OF COLORADO, }
Weld County, } *ss:*

Edward R. French, being duly sworn, on oath deposes and says that he is an attorney for the defendant (a corporation not keeping its general office in this State) in the above-entitled cause; that he has read the foregoing petition and knows the contents thereof, and that the matters and things therein stated are true, as he verily believes, and further says that there is no official of said defendant corporation in this county.

EDWARD R. FRENCH.

Subscribed and sworn to by said Edward R. French this thirtieth day of October, A. D. 1884, before me—

CHARLES H. WHEELER, *Clerk.*

Endorsed: "Gen. No., 349. Dist. court of Weld county. Wm. F. Thompson *et al. vs.* The U. P. R'y Co. Supplemental pet'n.
36 Petition for removal of cause. Filed Oct. 30, 1884. Charles H. Wheeler, clerk. Teller & Orahood, E. R. French, attorneys for petitioner."

And afterwards and on, to wit, the 30th day of October, A. D. 1884 (the same being one of the regular juridical days of the October term, A. D. 1884, of said court), the following proceedings (*inter alia*) were had and entered of record in said court in said cause, to wit:

WILLIAM F. THOMPSON *et al.*
vs.
THE UNION PACIFIC RAILWAY COMPANY. } 349.

At this day come the plaintiffs, by H. N. Haynes, Esq., their attorney, and the defendant, by E. R. French, Esq., its attorney, also comes; and the defendant presents to the court the petition and supplemental petition and bond for the removal of this cause to the circuit court of the United States for the district of Colorado, which bond is approved.

The question of the removability of the cause for want of time to consider the same is not determined by this court at this time.

STATE OF COLORADO, } ss:
County of Weld, }

37 I, Charles H. Wheeler, clerk of the district court of the second judicial district of the State of Colorado within and for the county of Weld, do hereby certify the above and foregoing to be a full, true, and correct transcript and copy of the complaint, the affidavit of James K. Thompson, the order for injunction, the undertaking on injunction, the injunction writ, the summons, the stipulation on part of plaintiff, the answer, the stipulation on part of defendant, the replication, the petition for removal of cause, the bond for removal of cause, the supplemental petition for removal of cause heretofore filed and all orders of court had and entered of record in a certain cause in said court depending, wherein William F. Thompson and James K. Thompson are plaintiffs and The Union Pacific Railway Company is defendant, as appears from the records and files of said court still remaining in my office.

Witness my hand and the seal of said court, at Greeley, in said county, this 5th day of December, A. D. 1884.

[Seal Dist. Court, Weld Co.]

(Signed) CHARLES H. WHEELER, *Clerk.*

(Endorsed:) 1672. Thompson *vs.* U. P. R. Co. U. S. C. C. Transcript from dist. court, Weld Co. Filed Dec. 27, 1884. (Signed) Edward F. Bishop, clerk. Teller & Orahood.

38 And afterwards and on, to wit, the 4th day of May, A. D. 1886, the same being one of the regular juridical days of the May term, A. D. 1886, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order Extending Time to Take Testimony.

WILLIAM F. THOMPSON and JAMES K. THOMPSON *vs.* THE UNION PACIFIC RAILWAY COMPANY.	1672. In Chancery. Bill for an Injunction and for Other Relief.

At this day come the said complainants, by A. C. Phelps, Esq., their solicitor, and the said defendant, by H. M. Orahood, Esq., its solicitor also comes.

And thereupon, on motion of the said complainants, it is ordered by the court that the time to take proof herein be enlarged to ninety (90) days from this day and under the equity rules.

And afterwards and on, to wit, the 29th day of June, A. D. 1887, the same being one of the regular juridical days of the May term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order: Set for Hearing.

39 WILLIAM F. THOMPSON *et al.* *vs.* THE UNION PACIFIC RAILWAY COMPANY.	1672. In Chancery. Bill for an Injunction and for Other Relief.

At this day come the said complainants, by A. C. Phelps, Esq., their solicitor, and the said defendant, by Willard Teller, Esq., its solicitor, also comes.

And thereupon, on motion of the said defendant, it is ordered by the court that this cause be set down for hearing on Tuesday next, the 5th day of July.

And afterwards and on, to wit, the 1st day of July, A. D. 1887, came John W. Webster, Esq., an examiner in chancery of said court, and filed in said court and in said cause his report of the testimony taken before him as such examiner.

And the said report is in words and figures as follows, to wit:

Report of Examiner.

In the Circuit Court of the United States for the District of Colorado.
In Equity.

W. F. THOMPSON *et al.*, Complainants,
vs.
THE UNION PACIFIC R. R. COMPANY, Defendant.

40 On application of the complainant-, by Messrs. Benedict & Phelps, solicitors, it appearing that the said complainant- desire the evidence to be adduced in said cause to be taken orally, under the sixty-seventh rule of the Supreme Court of the

United States, and amendments, it is ordered that Wednesday, the 21st day of July, A. D. 1886, at two o'clock p. m., at my office in Denver, be, and is hereby, fixed as the time and place for taking the same, and that two days' notice be given to defendant's solicitor of time and place at which the examination of witnesses in said cause will commence.

Dated at Denver this 15th day of July, A. D. 1886.

(Signed) JOHN W. WEBSTER, *Examiner.*

In the Circuit Court of the United States for the District of Colorado. In Equity.

W. F. THOMPSON *et al.*, Complainants,
vs.
THE UNION PACIFIC R. R. COMPANY, Defendant.

To Messrs. Teller & Orahood, solicitors for the above-named defendant:

Take notice that the complainant- desire the evidence to be adduced in the above-entitled cause to be taken orally under the sixty-seventh rule in equity prescribed by the Supreme Court, and by an order of John W. Webster, Esq., one of the examiners of said
41 court, lately made in said cause, it is directed that two days' notice of the time and place at which the examination of witnesses in said cause will commence be given to the defendant's solicitors. You will further take notice that the examination of witnesses on behalf of the complainant- in said cause will commence before the said examiner, at his office in the city of Denver, on the 21st day of July, A. D. 1886, at 2 o'clock p. m., and proceed as said examiner may direct.

Dated at Denver this 15th day of July, A. D. 1886.

(Signed) BENEDICT & PHELPS,
Solicitors for Complainants.

We hereby acknowledge service on us of a copy of the within notice this 15th day of July, A. D. 1886.

(Signed) TELLER & ORAHOOD,
Solicitor- for Def't.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the District Court of the United States for the District of Colorado.

W. F. THOMPSON *et al.*, Complainants,
vs.
THE UNION PACIFIC RAILROAD COMPANY, Defendants. } In Chancery.

Testimony of witnesses taken before me, John W. Webster, one of the examiners in chancery of the circuit court of the
42 United States for the district of Colorado, in accordance with the 67th rule of the Supreme Court of the United States and amendments thereto, and also by virtue of an order by me made as examiner, fixing the time and place for taking the same, notice of which was duly served upon defendant's counsel, which said notice and service are hereto attached, in a certain suit or matter now pending and undetermined in said circuit court, wherein W. F. Thompson *et al.* are complainants and The Union Pacific Railroad Company is defendant, on behalf of complainants, on this Wednesday, the 21st day of July, A. D. 1886, at 2 o'clock p. m., at my office in Denver, Arapahoe county, State of Colorado.

Present: Messrs. Benedict & Phelps, solicitors for complainant-, and Messrs. Teller & Orahood, solicitors for defendant; and thereupon, by consent of counsel, the taking of testimony in this cause was continued until Thursday, the 22nd day of July, A. D. 1886, at the hour of 2 o'clock p. m., at my office at Denver.

(Signed) JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this Thursday, the 22nd day of July, A. D. 1886, at 2 o'clock p. m., counsel for the respective parties being present.

Thereupon solicitors for complainant- produce a certain stipulation and agreement, signed by solicitors for the respective parties, to which is attached Exhibits "A, B, C, & D," and which said stipulation and "exhibits" attached are to be filed with me, as examiner, and returned as a part of my report of testimony taken, either party being at liberty to take other testimony as desired, the parties
43 reserving the right to all exceptions or objections which may be made to the same on the ground of immateriality, irrelevancy, and incompetency, as set forth in said stipulation, and which is hereto attached and marked "Exhibit I" and made a part of the testimony in this case.

And thereupon complainants' solicitor produced WILLIAM F. THOMPSON, a witness on behalf of complainants, who, being by me duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in relation to the matters in controversy, deposed and testified as follows:

Q. 1. State your name, age, and residence.

A. William F. Thompson; I was 48 years old last June; my residence is in this city—Denver, Arapahoe county, Colorado.

Q. 2. How long have you lived in Colorado?

A. 25 years.

Q. 3. Are you one of the plaintiffs in this case?

A. Yes, sir.

Q. 4. Are you acquainted with the other plaintiff; and, if so, who is he?

A. Yes, sir. The other plaintiff is my brother.

Q. 5. Are you acquainted with lots 5, 6, & 7, in block 62, in the town of Greeley, Weld Co., Colo.?

A. I am, sir.

Q. 6. For how long a time?

A. 15 years.

Q. 7. That is since 1871?

A. Yes; that makes 15 years; this is 1886.

Q. 8. State whether or not you and your brother have ever been in possession of those lots.

44 A. Yes, sir; we have been in possession of them all that time.

Q. 9. State when you and he first went into possession.

A. In 1871; in January, I think it was.

Q. 10. Describe particularly the nature, character, and extent of that possession.

A. The lots have all been enclosed and fenced around them 6 feet or 6 and ½ feet high; there has been buildings put on them and also lumber piled on them all the time; it was enclosed as a yard for handling lumber and has been occupied all over the whole space all the time by stacks of lumber and also buildings.

Q. 11. What is the nature, extent, and character of your possession at the time this suit was brought?

A. It was all occupied as it had been theretofore and all enclosed just as I have described it, exactly, and has been all the time.

Q. 12. When was the fence of which you have spoken erected, and by whom?

A. The fence was erected by me at the time I got the lots, in 1871.

Q. 13. During the entire period from 1871 to the time of the commencement of this action state who, if any one, else has occupied or possessed or exercised any control or right respecting this property.

A. There has been no one. We had them and used them the whole of the time, as stated before; I and my brother.

Q. 14. State whether or not at any time during the period from 1871 to the commencement of this suit your possession to these lots or your right or title thereto has been at any time dis-

45 turbed, threatened, or questioned; and, if so, when, and by whom?

A. Up to within a week of the commencement of this suit my right and ownership and the possession of the land had never been disputed by any one or questioned or disturbed; within a week or

less before the commencement of this action I understood that the railroad claimed the right of way; they began to lay a road through and on these lots, a railroad track, giving us notice to remove our lumber and other material off the lots; at that time they claimed it as a part of their right of way.

Q. 15. By the railroad company do you mean the defendant in this suit?

A. Yes, sir.

Q. 16. State whether or not this claim, set up, as you say, a week or so before suit was begun, was the first you had ever heard of the defendant's claiming any part or portion of these lots.

Defendant's counsel objects because it is incompetent, immaterial, and irrelevant.

A. It was.

Same objection to the answer.

Q. 17. Had you or not, prior to the commencement of this suit, ever heard of any right or claim of right for any part of these lots by or on behalf of the Denver Pacific Railway and Telegraph Co.?

Defendant's counsel objects for same reasons last above given.

A. I have not, sir.

Q. 18. State whether or not at any time since you first went into possession of these lots you have ever known or suspected
46 that any person or party whomsoever claimed any part or all of these lots or any interest in them adversely to yourself or to yourself and brother.

Def't's counsel objects for same reasons last above given.

A. I never have known that any one claimed or had any right to them whatever but ourselves. I neither knew nor suspected anything of the kind.

Q. 19. State whether or not you paid any consideration for this property at the time of the purchase; and, if so, about how much.

A. I paid a money consideration in cash, about $180.00 or more a lot.

Q. 20. What is the present value of the three lots, if you know, for cash in the market?

A. Well, I should say they were worth about $800.00 a lot.

Q. 21. Do you own other property adjoining these lots?

A. I own from lot one up to these—number- 1, 2, 3, & 4, in the same block.

Q. 22. State how they are and have been used.

Def't's counsel objects for same reasons last above given.

A. Lots one, two, and three have a large wooden residence on them. All the lots from one to seven make nearly a square block or piece of ground about 175 feet one way by 125 the other. The dwelling-house is probably on lots 2 & 3, and also on those lots is a small story-and-a-half house. On lots 4 & 5 or about that is a ware-

house. The whole piece of ground is a lumber yard and has always been used in that way as a lumber yard.

Q. 23. Do you mean to say that it has been so occupied by
47 yourself and brother during all this time?

Def't's counsel objects for same reasons last above given.

A. Yes, sir.

Q. 24. At the time you and your brother were first in possession of this property, in 1871, was there or not a railroad track near them?

A. Yes, sir.

Q. 25. What track was it?

A. The track of the Denver Pacific Railway and Telegraph Company.

Q. 26. What company controls that track now?

A. The Union Pacific, I believe—the defendant.

Q. 27. Describe the location of the railroad track as regards its proximity in relation to your property or this property in controversy?

A. The railroad track runs to the west of these lots, fifty feet from the lots or about that.

Q. 28. That is, from lot 7?

A. Yes, sir.

Q. 29. That is the most westerly of you- lots, is it—of those lots in dispute?

A. Yes, sir; lot 7 is the most westerly of the lots in dispute, and it is about 50 feet from the west side of lot 7 to the center of the railroad track.

Q. 30. How well acquainted are you with the town of Greeley and the lay of the ground there, especially in proximity to the line of the railway through said town?

A. I know all the land and lots and the railroad as it runs
48 through Greeley, having lived there 12 years or thereabouts and being familiar with it every day during that time.

Q. 31. I will ask you to look at "Exhibit D," attached to the stipulation filed here with the referee, it being a map of the town of Greeley, and especially that portion which marks the line of the railway, and state with what degree of correctness the railroad is marked on said map, and especially with reference to that portion of it which runs through block 62.

A. This map shows the railroad as it runs through block 62, exactly, I think, and probably so as to all the balance.

Q. 32. How wide is the right of way through block 62 as used by the railroad about the time of the commencement of this suit, if you know?

A. 100 feet.

Q. 33. State what, if any, change there has been in the right of way and trackage of the railroad as used by the said Denver Pacific road and defendant in this case since you went into possession of the property in block 62, particularly as to the width of the right of way and the location of tracks.

A. The right of way as used is the same width and used the same, and the main line of the road is just the same now as it was when I first owned and used these lots and has been during all the time. There has been no alteration in the main line of the road whatever nor in the width of the right of way as used. There has been some side tracks laid down, but in other respects the right of way and trackage is just the same.

Q. 34. Have you ever known since you and your brother first went into possession of the said Denver Pacific Railroad and Telegraph Company or the defendant claiming a right of way
49 through said block 62 feet wider than 100 feet?

Defendant's counsel objects because it is incompetent, immaterial, and irrelevant.

A. I have not up to within a week or two of the commencement of this suit.

Q. 35. What effect upon the value or use of lots 1, 2, 3, & 4, in block 62, would the taking of lots 5, 6, & 7 have, if any?

Def't's counsel objects for same reasons last above given.

A. It would destroy their value very largely and would prevent our using this ground as a lumber yard altogether.

Q. 36. To what extent in dollars and cents, in your judgment, would it depreciate the market value of lots 1, 2, 3, & 4, if any?

Def't's counsel objects for same reasons last above given.

A. It would depreciate their value more than one-half—say about $3,000.00—because this block of ground as it now is is valuable for a yard for the lumber business, and the houses which I have spoken of before are also valuable to use, but if these lots were removed, leaving only lots 1, 2, 3, & 4, the piece would be too small to be of any value to use, and it would bring the railroad so near these houses that they would be rendered almost worthless.

By consent of counsel the further taking of testimony is hereby continued until Tuesday, the 27th of July, A. D. 1886, at 2 o'clock p. m., at my office.

(Signed) JOHN W. WEBSTER, *Examiner.*
" WILLIAM F. THOMPSON.

50 Subscribed and sworn to before me this 28th day of July, A. D. 1886.

(Signed) JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, on this Tuesday, the 27th day of July, A. D. 1886, at 2 o'clock p. m., counsel for the respective parties being present, thereupon the following stipulation was entered of record before me in this cause:

"It is stipulated that all the facts sworn to by William F. Thompson in the above testimony by him given may be considered as being also established by the evidence of his coplaintiff, James K. Thompson, the same as if he had been sworn and had testified

thereto, subject to the same objections as made to the evidence of said William F. Thompson; and it is also stipulated that the said James K. Thompson has had no other or different notice of any claim of the Denver Pacific Railway and Telegraph Company or the defendant company or of any claim adverse to that of the complainants than has the said William F. Thompson, as testified to by him or otherwise shown by the record."

By consent of counsel the further taking of testimony is hereby continued until Wednesday, the 28th day of July, A. D. 1886, at 2 o'clock p. m., at my office, in Denver.

(Signed) JOHN W. WEBSTER, *Examiner.*

Pursuant to the foregoing continuance, this 28th day of July, A. D. 1886, at the hour of two o'clock p. m., counsel for the respective parties being present, thereupon the following stipulations
51 were entered of record before me, to wit:

With respect to the three tracts of land mentioned in the stipulation heretofore entered into, namely, the Quigley tract, being the north half of the southwest quarter of section 5, township 5 north of range 65 west, Weld county, Colorado, and the William tract, namely, the northeast quarter of section 8 of said township, and the Bartels tract, namely, the northwest quarter of said section 8, it is stipulated that the following facts may be treated as proven—that is to say:

That said Quigley tract was a pre-emption and was taken and settled upon by Quigley Sept. 1st, 1866, the land office entry being Oct. 1st, 1867, at which time the receiver's receipt issued; that the Williams tract is a homestead entry made by him Dec. 1st, 1865, the final cash payment and land office entry thereof being April 20th, 1870, at which time the receiver's receipt issued therefor; that the Bartels tract was taken by him at private sale, land office entry being Oct. 9th, 1869, at which time the receiver's receipt issued therefor.

(Signed) JOHN W. WEBSTER, *Examiner.*

July 28th, 1886.

In the Circuit Court of the United States, District of Colorado.

WILLIAM F. THOMPSON
vs.
THE UNION PACIFIC RAILWAY COMPANY.

52 *Stipulation.*

It is hereby stipulated and argued by and between the parties hereto that time for taking the testimony in the above-entitled cause may be extended until the 20th day of September, 1886, and it is hereby so extended.

(Signed) BENEDICT & PHELPS,
Attorneys for Complainant.
" TELLER & ORAHOOD,
Attorneys for Defendant.

Exhibit 1.

(Signed) JOHN W. WEBSTER, *Examiner.*

UNITED STATES OF AMERICA, *District of Colorado.* } *ss:*

In the District Court, 8th Judicial Circuit, within and for said District.

WILLIAM F. THOMPSON and JAMES K. THOMPSON, Plaintiffs,
vs.
THE UNION PACIFIC RAILWAY CO., Defendant.
} Removed from District Court of Weld County.

It is hereby stipulated and agreed that the matters and things hereinafter stated may be considered as being established
53 by proper evidence and testimony, and be considered with like effect upon the final hearing of said cause as if regularly proved—that is to say:

That lots five, six, and seven, in block sixty-two of the town of Greeley, Weld county, State of Colo., being the same premises mentioned in the plaintiffs' complaint herein, are a part of the 80-acre tract of land known as the south half of the southwest quarter of section 5, township 5 north, of range 65 west, of the 6th principal meridian; that said 80-acre tract is a part of certain lands granted by the Government of the United States to the Denver Pacific Railway and Telegraph Co.; that said company was incorporated in the year of our Lord 1867, and said tract of land was granted to it by a certain act of Congress passed in the year of our Lord 1869, to which time the company's title relates, although the letters patent were not issued until many years subsequent to that time; that on April 15th, 1870, the Union Colony of Colorado became a corporation with power to hold real estate, &c., organized for the purpose of laying out a town, building ditches, &c.; that on April 13th, 1870, John Evans, who was trustee for the said Denver Pacific Railway and Telegraph Company, made, executed, and delivered to Horace Greeley, trustee for the said Union Colony, a deed of which "Exhibit A," attached hereto, is a copy, and which deed was recorded in said county April 29th, 1870; that said Evans was duly authorized to make said conveyance and thereby pass the title to said railway company to the lands described in said deed, to all intents and purposes, as by the said deeds he purports to do; that said deed is properly executed, acknowledged, &c., and is to be taken and considered as a part of the evidence in the case; that on the 19th day of May, 1870, said Horace Greeley made, executed, and delivered to the Union Colony
54 of Colorado aforesaid, a deed, of which "Exhibit B," hereto attached, is a copy; that said deed was correctly made, acknowledged, and delivered, and is to be considered as a part of this evidence; that on October 1st, 1870, the Union Colony of Colorado aforesaid made, executed, and delivered to the said railway company aforesaid a right-of-way deed, of which "Exhibit C," hereto attached, is a correct copy; that said deed was properly executed, acknowledged, delivered, &c., and is to be taken and considered as

a part of the evidence herein; that from the Union Colony of Colorado, by divers mesne conveyances, the plaintiffs in this action received conveyances for lots 5, 6, and 7 aforesaid, made in good faith, purporting to convey the said lots in fee simple, without reservation, condition, or limitation; that said plaintiffs, or one of them, or persons through whom they claim, have had the actual possession of the property described as lots 5, 6, and 7, in block 62, aforesaid, since the month of January, 1871, claiming the same as their property, acquired by said conveyances from the Union Colony aforesaid; that since the date last aforesaid the authorities charged by law with the duty of assessing and collecting revenue for State, county, municipal, or town purposes have assessed and collected taxes for such purposes upon the property described as lots 5, 6, and 7, block 62, aforesaid, as town lots in the town of Greeley, in Weld county aforesaid, and such taxes were legally assessed in manner and form, and the plaintiffs herein, or those under whom they claim, have each year paid taxes so assessed, being all taxes legally assessed against said lots; that at the time of the making and delivery of the aforesaid deed from the Union Colony of Colorado
55 to the said railway company there has been filed and placed upon record a map or plat of the town of Greeley, based upon a survey of said town of Greeley, dividing into lots and blocks the 80-acre tract above herein mentioned and certain other tracts of land, which map or plat was defectively executed and acknowledged; that another map and plat of said town of Greeley was made and filed for record in the recorder's office of Weld county on the 29th day of June, 1871, a correct copy of which is hereunto attached and marked "Exhibit D," and is to be considered a part of the evidence in this case, it being to all intents and purposes, so far as this controversy is concerned, as the other map and plat already above referred to; that both the plats above referred to embraced and included divers large tracts of land other than the 80-acre tract above herein mentioned, among which is a tract being the north half of the southwest quarter of said section 5, a tract known as the northeast quarter of section 8, township 5 aforesaid, and a tract known as the northwest quarter of said section 8, which said last three tracts were not a part of the land acquired by said railway Co. from the Government of the United States, but are tracts acquired by the Union Colony, of Greeley, aforesaid, prior to the making of said right-of-way deed from one Quigley and one Williams and one Bartels, respectively, to whom they had been severally granted by letters patent from the Government of the United States; that a portion of the property described in said right-of-way deed from the Union Colony of Colorado to said railway company (being "Exhibit C"), to wit, the north 40 feet of block 59 and all of blocks 42, 39, 22, 19, and 2 are not within the limits of the 80-acre tract first above herein mentioned, but are within the limits of the said tract granted to the said Quigley, as aforesaid; that blocks
56 100 and 101 are in the tract patented to the said Williams, as aforesaid, and block 82 is in the tract patented to said Bartels, as aforesaid, and that the defendant in this case is the successor of

the Denver Pacific Railway and Telegraph Company and entitled to all the rights, franchises, and property of the said Denver Pacific Railway and Telegraph Company not by the latter company conveyed or disposed of.

It is understood and agreed that the relevancy and materiality of the matters and things above stipulated are not by this stipulation conceded, but all right to object to the consideration of the same on the ground of immateriality, irrelevancy, and incompetency is hereby especially reserved.

And it is further understood that this stipulation shall be filed with John W. Webster, Esq., and by him returned as a part of his report of testimony taken, either party being at liberty to take other testimony as desired.

(Signed) BENEDICT & PHELPS,
For the Plaintiff.
" TELLER & ORAHOOD,
Att'ys for Def't.

Ex. A.

Deed from John Evans to Horace Greeley, Trustee.

Filed for record at 6 o'clock p. m. April 29th, A. D. 1870.
F. E. MOYER, *Recorder.*

57 Know all men by these presents that I, John Evans, of the county of Arapahoe and Territory of Colorado, as trustee of the Denver Pacific Railway and Telegraph Company, by virtue of the authority in me vested by a certain mortgage made and executed by the said Denver Pacific Railway and Telegraph Company under date of August the tenth, A. D. 1869, to John Edgar Thompson, Adolphus Meier, and John Evans, trustees, and recorded in the several counties through which said railway is located, and also by virtue of a certain power of attorney made and executed by the said trustees to the said John Evans, also of record in said several counties, for and in consideration of the sum of thirty-one thousand and fifty-eight dollars and fifty-eight cents ($31,058.58), to him in hand paid by Nathan C. Meeker, Robert A. Cameron, Henry T. West, and other persons associated with them, the same being the appraised value of the land herein mentioned, do hereby bargain, sell, and convey unto Horace Greeley, of the city, county, and State of New York, in trust for the use and benefit of the said Nathan C. Meeker, Robert A. Cameron, Henry T. West, and their associates, known and designated as The Union Colony and associated together and contributing the purchase-money aforesaid for the purpose of purchasing, settling upon, and improving lands in the Territory of Colorado, and unto his successors, heirs, and assigns forever, in trust as aforesaid, the following-described real estate situate in the county of Weld and Territory of Colorado, to wit:

Township.	Range.	Section.	Part of section.	No. of acres.	Price per acre.	Total.
5 N.	65 W.	1	North half	317.60	3	$952 80
5 "	65 "	1	Southeast ¼	160	3	480 00
5 "	65 "	1	North ½ southwest ¼	80	3	240 00
5 "	65 "	3		632.84	3	1,898 52
5 "	65 "	5	Southeast ¼	160	4	640 00
5 "	65 "	5	South ½ southwest ¼	80	4	320 00
5 "	65 "	7		646.40	4	2,585 60
5 "	65 "	9	South ½ northeast ¼	80	4	320 00
5 "	65 "	9	Northwest ¼	160	4	640 00
5 "	65 "	9	South half	320	4	1,280 00
5 "	65 "	11	North ½ northwest ¼	80	3	240 00
5 "	65 "	15	North half	320	4	1,280 00
5 "	65 "	15	North ½ southeast ¼	80	4	320 00
5 "	65 "	15	East ½ southwest ¼	80	4	320 00
5 "	65 "	15	Northwest ¼ southwest ¼	40	4	160 00
5 "	65 "	17		640	4	2,560 00
5 "	66 "	33	North ½ southeast ¼	80	5	400 00
5 "	66 "	33	Southwest ¼	160	4	640 00
5 "	66 "	35	North ½	320	3	960 00
4 "	66 "	5	South ½ northwest ¼	80	5	400 00
6 "	65 "	29		640	3	1,920 00
6 "	65 "	31	Northwest ¼	164.32	3	492 96
6 "	65 "	33		640	3	1,920 00
59						
6 "	65 "	35		640	3	1,920 00
6 "	66 "	25		640	3	1,920 00
6 "	66 "	31	North ½ northeast ¼	80	3	240 00
6 "	66 "	31	North ½ northwest ¼	80.60	3	242 58
6 "	66 "	31	South ½ southeast ¼	80	3	240 00
6 "	66 "	31	South ½ southwest ¼	82.04	3	246 12
6 "	66 "	33	North ½ northeast ¼	80	3	240 00
6 "	66 "	33	North ½ northwest ¼	80	3	240 00
6 "	66 "	35	South ½ southeast ¼	80	3	240 00
6 "	66 "	35	South ½ southwest ¼	80	3	240 00
6 "	66 "	35	North ½ northwast ¼	80	3	240 00
6 "	67 "	25		640	3	1,920 00
6 "	67 "	27	North half	320	3	960 00
6 "	67 "	27	Southeast ¼	160	3	480 00
6 "	67 "	35	North ½ northeast ¼	80	3	240 00
6 "	67 "	35	Southwest ¼	160	3	480 00
				9,324.06		31,058 58

60 Reserving to said company and its assigns the right of way for said railway two hundred (200) feet in width and in manner and form as provided by the acts of Congress in relation thereto; and provided also that said company shall be exempt from all claims for damages to the possession and use of said lands as may accrue to the party of the second part or his assigns in the construction and operating of said railway:

To have and to hold the same, together with all and singular the appurtenances thereto belonging, all the right, title, and interest of

the said Denver Pacific Railway and Telegraph Company and of the said trustees, to the only proper use, benefit, and behoof of the said Horace Greeley, trustee, in trust aforesaid, and to his successors, heirs, and assigns forever.

In witness whereof I have hereunto set my hand and seal this thirteenth day of April, A. D. 1870.

JOHN EVANS. [SEAL.]

[U. S. rev. stamps, $31.50, canceled.]

TERRITORY OF COLORADO, } ss:
County of Arapahoe, }

I, Edward P. Jones, a notary public in and for said county, in the Territory aforesaid, do hereby certify that John Evans, personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

61 Given under my hand and notarial seal this thirteenth day of April, A. D. 1870.

EDWARD P. JONES,
Notary Public.

[NOTARIAL SEAL.]

STATE OF COLORADO, } ss:
County of Weld, }

I, William H. Nice, county clerk and *ex officio* recorder within and for said county and State aforesaid, do hereby certify the foregoing to be a true and correct transcript of the record of a certain deed from John Evans, trustee of the D. P. R'y & Tel. Co., to Horace Greeley, trustee, as the same appears of record in Book One of Deeds, at page 540, of the records of said Weld county, now in my office.

Given under my hand and official seal this 26th day of May, A. D. 1884.

[Seal Weld County.]

(Signed) WILLIAM H. NICE,
County Clerk and Recorder,
By J. B. PHILLIPS, *Deputy.*

(Endorsed.) Certified copy of deed. John Evans, trustee, to Horace Greeley. Ex. A.

62 Ex. B.

Deed from Horace Greeley, Trustee, to Union Colony.

Filed for record at 2 o'clock p. m., August 23d, A. D. 1870.

S. WARD,
Dept. Recorder.

This indenture, made the 19th day of May, in the year one thousand eight hundred and seventy, between Horace Greeley, of the city, county, and State of New York, trustee, in trust for the Union Colony, party of the first part, and the Union Colony of Weld County, Colorado Territory, parties of the second part:

Now this indenture witnesseth that the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, release, convey, and confirm, unto the said parties of the second part the following tracts or parcels of land, viz:

63	Town.	Range.	Section.	Part of section.	Acres.
	5 N.	65 W.	1	North ½	317.60
	"	"	"	S. E. ¼	160.00
	"	"	"	N. ½ S. W. ¼	80.00
	"	"	3		632.84
	"	"	5	S. E. ¼	160.00
	"	"	"	S. ½ S. W. ¼	80.00
	"	"	7		646.40
	"	"	9	S. ½ N. E. ¼	80.00
	"	"	9	N. W. ¼	160.00
	"	"	"	S. ½	320.00
	"	"	11	N. ½ N. W. ¼	80.00
	5 N.	65 W.	15	N. ½	320
	"	"	"	N. ½ S. E. ¼	80
	"	"	"	E. ½ S. W. ¼	80
	"	"	"	N. W. ¼ S. W. ¼	40
	"	"	17		640
	5 N.	66	33	N. ½ S. E. ¼	80
	"	"	"	S. W. ¼	160
	"	"	35	N. ½	320
	4 N.	66 W.	5	S. ½ N. W. ¼	80
	6 N.	65 W.	29		640
	"	"	31	N. W. ¼	164.32
	"	"	33		640.00
64	"	"	35		640
	6 N.	66	25		640
	"	"	31	N. ½ N. E. ¼	80
	"	"	"	N. ½ N. W. ¼	80.86
	"	"	"	S. ½ S. E. ¼	80
	"	"	"	S. ½ S. W. ¼	82.04
	"	"	33	N. ½ N. E. ¼	80
	"	"	"	N. ½ N. W. ¼	80.00
	"	"	35	S. ½ S. E. ¼	80.00
	"	"	"	S. ½ S. W. ¼	80.00
	6 N.	66 W.	35	N. ½ N. W. ¼	80.00
	6 N.	67 "	25		640.00
	"	"	27	N. ½	320.00
	"	"	"	S. E. ¼	160.00
	"	"	35	N. ½ N. E. ¼	80.00
	"	"	"	S. W. ¼	160.00
					9,324.06

	Town.	Range.	Section.	Part of section.	Acres.
Purchased from—					
E. Williams	5 N.	65 W.	5	N. E. ¼	159.18
G. W. Phelps	6 N.	65 W.	31	N. E. ¼ of S. E. ¼ and S. ½ S. E. ¼.	120
Do.	5 N.	65 W.	6	N. E. ¼ & S. E. ¼ of N. W. ¼ (the whole 160).	205½
Do.	5 N.	65 W.	8	Undivided ½ S. E. ¼	53⅓
J. Quigley	5 N.	65 W.	10	N. W. ¼ (and his homestead right with house).	160
" " (Barnes)	5 N.	" "	5	N. ½ of S. W. ¼ & S. ½ N. W. ¼	160
John Gates	6 N.	" "	31	Lots 1 & 2 of S. W. ¼	164.96
" "	5 N.	66 "	1	Lot 21 of N. E. ¼ & E. ½ lot 2 N. W. ¼ & E. ½ lot 1 N. E. ¼.	161.74
D. H. Moffat, Jr.	6 N.	65 "	32	S. E. ¼ of N. W. ¼ & N. E. ¼ of S. W. ¼ & N. W. ¼ of S. E. ¼.	120
65					
Bartel & Remick	5 N.	65 "	8	W. ½	320
L. F. Bartel	" "	" "	10	S. ½ of S. W. ¼ & S. ½ of S. E. ¼ & N. W. ¼ of S. E. ¼.	200
M. L. Smith	" "	" "	6	E. ½ & N. W. ¼ of S. E. ¼ & N. E. ¼ of S. W. ¼.	160
David Barnes	" "	" "	6	W. ½ of N. W. ¼ & N. E. ¼ of N. W. ¼.	125.98

Being the same premises conveyed to the said Horace Greeley, in trust, as follows: The first 9,324.06 acres by the Denver Pacific Railway Company, and the balance by the parties whose names are set opposite the respective lots conveyed by each, together with all and singular the tenements, hereditaments, and appurtenances unto the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and claims and demands whatsoever, as well in law as in equity, of the party of the first part of, in, and to the same and every part and parcel thereof; to have and to hold the above mentioned and described premises hereby granted and conveyed or intended so to be, with the appurtenances, unto the said parties of the second part, their successors and assigns, to their only proper use, benefit, and behoof forever.

And the said party of the first part covenants, promises, and agrees to and with the said parties of the second part that the said party of the first part has not at any time made, done, committed, or caused any act, matter, or thing whatsoever whereby or by
66 means whereof the said premises hereby granted and released as aforesaid or any part thereof are or can in anywise be impeached or encumbered in title, charge, estate, or otherwise; and also that the said parties of the second part, their s-ccessors and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted, bargained, and described premises and every part and parcel thereof, with the appurtenances, and receive and take the rents, issues, and profits thereof, to and for their own proper use and benefit, without any let, suit, hindrance, molestation, eviction, or denial of, from, or

by the said party of the first part, his heirs and assigns, or of, from, or by any other person or persons whomsoever lawfully claiming or to claim any estate, right, title, or interest of, in, or to the same by, from, or under them or either of them.

In witness whereof the parties of these presents have hereunto interchang-ably set their hands and seals the day and year first above written.

HORACE GREELEY, [SEAL.]
Trustee in Trust.

Sealed and delivered in the presence of—
WALTER MEADE O'DWYER.
HENRY C. BANKS.
JOHN B., *N. Y.*

[U. S. rev. stamp, 50c., canceled.]

STATE OF NEW YORK, }
City and County of New York. }

67 Be it known that on this 19th day of May, A. D. 1870, before me, the subscriber, personally came Horace Greeley, to me personally known as the same person described in and who executed the foregoing instrument of writing, and acknowledged the execution thereof to be his free act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year first above written.

HENRY C. BANKS,
Comm's for Colorado in New York.

[Commissioner's Seal in New York.]

STATE OF COLORADO, }
County of Weld, } *ss:*

I, William H. Nice, county clerk and *ex officio* recorder within and for said county and State aforesaid, do hereby certify the foregoing to be a true and correct transcript of the record of a certain deed from Horace Greeley, trustee, to the Union Colony, as the same appears of record in Book One of Deeds, at page 571 of the records of said Weld county now in my office.

Given under my hand and official seal this 26th day of May, A. D. 1884.

(Signed) WILLIAM H. NICE,
County Clerk and Recorder,
By J. B. PHILLIPS, *Deputy.*

[Seal Weld County.]

(Endorsed:) Certified copy of deed. Horace Greeley, trus-
68 tee, to the Union Colony. Ex. B.

Ex. C

Right of Way from Union Colony of Colorado to Denver Pacific Railway and Telegraph Company.

Filed for record at 11 o'clock Nov. 1st, 1870.
W. J. KRAM, *Recorder.*

Whereas the line or track of the Denver Pacific Railway & Telegraph Co. runs through the lands of the Union Colony of Colorado and within the town plat of Greeley, Weld county, Colorado Territory, and an agreement has been made between the said Union Colony of Colorado & the Denver Pacific Railway & Telegraph Co. by which the said Union Colony of Colorado has agreed to grant to the Denver Pacific Railway & Telegraph Co., being the owner of said lands, a right of way in and over the same: Now, therefore, know all men by these presents that the said Union Colony of Colorado, in pursuance of the said agreement and in consideration of the sum of one dollar paid to the said Union Colony of Colorado, do hereby give, grant, sell, and convey unto the said Denver Pacific Railway & Telegraph Co. a right of way of fifty feet on each side from the centre of the line or track of said Denver Pacific Railway & Telegraph Co. in and over and running through said town plat of Greeley aforesaid, on the east side thereof and along the said line of said railway, the said strip of land or right of way being of the width of one hundred feet and commencing at the southeast corner of the said town plat of Greeley and running north through
69 the following blocks: One hundred and one (101), one hundred (100), eighty-two (82), seventy-nine (79), sixty-two (62), thirty-nine (39), twenty-two (22), nineteen (19), & two (2), as platted and recorded in the office of the clerk of Weld county, and the said right of way shall be forever of the said dimensions; also the said Union Colony of Colorado does hereby give, grant, sell, and convey unto the said Denver Pacific Railway & Telegraph Co. a right of way of two hundred feet along the line or track of the said Denver Pacific Railway & Telegraph Co. and within the blocks No. forty-two (42) & fifty-nine (59) in the town of Greeley, as platted and recorded in the office of the recorder of Weld county, said right of way commencing at the centre of the line or track of the said Denver Pacific Railway and Telegraph Co. and extending one hundred and fifty feet to the east side and fifty feet to the west side thereof. The said Union Colony of Colorado agrees to lay out and construct along and east of said right of way a street sixty-six feet wide, running north and south, and within the blocks Nos. forty-two (42) and fifty-nine (59) aforesaid, and the said right of way shall be forever of the said dimensions.

In further consideration it is expressly agreed between the parties hereto that the said Denver Pacific Railway and Telegraph Co. shall erect within three months from the date of this instrument a good and substantial building for a freight and passenger depot, at or near the point of said right of way where the said railway crosses Main

street, in the town of Greeley aforesaid, being on the north side of and along said Main street. It is also agreed in further consideration between the parties aforesaid that the said Denver Pa-
70 cific Railway and Telegraph Co. shall have for its use and benefit only the said right of way, without any right or power to give, grant, sell, convey, or rent the same. It is also agreed that intoxicating liquors shall never be manufactured, sold, or given away in or upon said premises herein conveyed with the knowledge or consent of said Denver Pacific Railway and Telegraph Company; and in case any one of these conditions shall be violated this conveyance and everything herein contained shall be null and void:

To have and to hold the said easements and privileges to the said Denver Pacific Railway & Telegraph Co. forever as appurtenances to the said railway, as above described.

In witness whereof the party of the first part has affixed its corporate seal and caused the same to be signed by N. C. Meeker, its agent and attorney in-fact, this twenty-first day of October, A. D. 1870.

[CORPORATE SEAL.] N. C. MEEKER, *President.*

Signed and sealed in presence of—
F. M. BABCOCK.

[U. S. rev. stamp, 50 cts.]

TERRITORY OF COLORADO, } ss:
Weld County, }

I, Frank M. Babcock, do hereby certify that on the twenty-first day of October, A. D. 1870, N. C. Meeker, pres't and attorney-in-fact for the Union Colony of Colorado, came before me, a notary public in the county aforesaid, and personally acknowledged that he had executed the within conveyance, and that I know the said N.
71 C. Meeker to be the same person who executed the said conveyance.

Given under my hand and notarial seal the day and year last above written.

[NOTARIAL SEAL.] FRANK M. BABCOCK,
Notary Public for Weld County.

STATE OF COLORADO, } ss:
County of Weld, }

I, William H. Nice, county clerk and *ex officio* recorder within and for said county and State aforesaid, do hereby certify the above to be a true and correct transcript of the record of a certain right-of-way deed from the Union Colony of Colorado to the Denver Pacific Railway and Telegraph Co. as the same appears of record in Book One of Mortgages, at page 298 of said Weld county records now in my office.

Given under my hand and official — this 26th day of May, A. D. 1884.

(Signed) WILLIAM H. NICE,
County Clerk and Recorder,
By J. B. PHILLIPS, *Deputy.*

[Seal Weld County.]

And afterwards and on, to wit, the 2nd day of November, A. D. 1887, the same being one of the regular juridical days of the November term, A. D. 1887, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Decree.

75	WILLIAM F. THOMPSON and JAMES K. THOMPSON *vs.* THE UNION PACIFIC RAILWAY COMPANY.	1672.	In Chancery. Bill for an Injunction and for Other Relief.

Now, on this day, come the said complainants, William F. Thompson and James K. Thompson, by M. Benedict, Esq., and Alfred C. Phelps, Esq., their attorneys and solicitors, and The Union Pacific Railway Company, the defendant aforesaid, by Willard Teller, Esq., its solicitor, and this cause coming on now to be heard by the court upon the pleadings in the cause, to wit, the answer and replication, and upon the stipulation of the parties as to certain facts to be considered as proven in the case and made part of the referee's report herein, as well as upon the evidence in the cause also embraced in the report of said referee, and the court, having fully considered the same and all other matters and things relating to the rights and interests of the parties herein, and having heard the arguments of counsel, and being now fully advised in the premises, doth find that the equity herein is with the said complainants, the said William F. Thompson and James K. Thompson; that they are, and are entitled to be, adjudged the owners of lots numbered five (5), six (6), and seven (7), in block numbered sixty-two (62), in the town of Greeley, in the county of Weld, and State of Colorado, being the premises mentioned in said complaint herein, as against the said defendant, and were at the time of the commencement of this action and are now entitled to an injunction and restraining order herein to restrain the said defendant, its agents, servants, and employees,
76 from committing the trespasses and illegal acts threatened and proposed, and restraining the said defendant, its officers, employees, and servants, from entering upon or in any manner interfering with the said plaintiffs in the possession, use, occupancy, and enjoyment of said above-described premises.

Wherefore it is ordered, adjudged, and decreed by the court that said complainants at the time of the commencement of this action were and now are the legal and equitable owners of said above-described premises, and entitled to the occupation, use, and enjoyment of the same without let, hindrance, or interference in any manner from the said defendant, its agents, employees, or servants, and that the temporary injunction heretofore granted in this cause by the district court of Weld county, in the State of Colorado, be, and the same is hereby, made perpetual, and that the said defendant, its officers, agents, servants, and employees, be, and they are hereby, perpetually restrained and enjoined from hereafter in any manner molest-

ing or in any manner interfering with the said complainants and their heirs and assigns in their occupation, use, and enjoyment of said premises.

And, further, that the defendant pay all costs of this action taxed or to be taxed herein within thirty days from this date, or that in default thereof execution issue for the same.

And thereupon the defendant prays an appeal to the Supreme Court of the United States, and the appeal bond is fixed at $1,000, to be filed within sixty days, with sureties to be approved by the clerk of this court.

77 And afterwards and on, to wit, the 12th day of December, A. D. 1887, came again the said defendant, by its attorneys aforesaid, and filed in said court and in said cause its bond, and sued out of said court a citation to the Supreme Court of the United States.

And the said bond is in words and figures as follows, to wit:

Bond.

THE UNITED STATES OF AMERICA, }
District of Colorado. }

Know all men by these presents that The Union Pacific Railway Company, as principal, and Willard Teller and Samuel N. Wood, as sureties, are held and firmly bound unto William F. Thompson and James K. Thompson in the full and just sum of one thousand (1,000) dollars, to be paid to the said William F. Thompson and James K. Thompson; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this — day of December, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at the November term, A. D. 1887, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between said William F. Thompson and James K. Thompson, complainants, and said The Union Pacific Railway Company, defendant, judgment was rendered against the said The Union Pacific Railway Company, and the said The Union
78 Pacific Railway Company having proved and been allowed an appeal to the Supreme Court of the United States, and a citation directed to the said William F. Thompson and James K. Thompson, citing and admonishing them to be and appear at a term court of the United States to be held at Washington, D. C., on the — day of —— next:

Now, the condition of the above obligation is such that if the said The Union Pacific Railway Company shall prosecute said appeal to effect and answer all damages and costs if it fails to make